



City of Albuquerque

Legislative File Number O-06-24 (version 4)

CITY of ALBUQUERQUE SEVENTEENTH COUNCIL

F/S Authorizing the Issuance and Sale of Transit System Improvement Grant Revenue Bonds for the Purpose of Extending, Repairing, Replacing and Improving the City's Transit System by the Purchase of Additional Buses (Heinrich)

CITY of ALBUQUERQUE SEVENTEENTH COUNCIL

AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE, NEW MEXICO TRANSIT SYSTEM IMPROVEMENT GRANT REVENUE BONDS, SERIES 2006, IN THE FORM OF A LEASE PURCHASE AGREEMENT IN THE AMOUNT OF \$20,000,000 FOR THE PURPOSE OF EXTENDING, REPAIRING, REPLACING AND IMPROVING THE CITY'S TRANSIT SYSTEM BY THE PURCHASE OF ADDITIONAL BUSES; PROVIDING FOR THE DISPOSITION OF, AND OTHER DETAILS RELATING TO, CERTAIN GRANT REVENUES OF THE TRANSIT SYSTEM, INCLUDING THE PAYMENT OF DEBT SERVICE ON THE SERIES 2006 TRANSIT SYSTEM IMPROVEMENT GRANT REVENUE BONDS; APPROVING THE SALE AND THE TERMS OF THE SERIES 2006 BONDS; PROVIDING THE FORM, TERMS AND CONDITIONS OF THE SERIES 2006 BONDS, IN THE FORM OF A LEASE PURCHASE AGREEMENT; PRESCRIBING OTHER DETAILS CONCERNING THE SERIES 2006 BONDS AND TRANSIT SYSTEM GRANT REVENUES, INCLUDING BUT NOT LIMITED TO COVENANTS AND AGREEMENTS IN CONNECTION WITH THE SERIES 2006 BONDS AND THE FORM AND MANNER OF EXECUTION OF THE SERIES 2006 BONDS; MAKING CERTAIN APPROPRIATIONS; AND RATIFYING ACTION PREVIOUSLY TAKEN.

Capitalized terms used in the following preambles are defined in Section 1 of this Ordinance, unless the context requires otherwise.

WHEREAS, the City is a legally and regularly created, established, organized and existing municipal corporation under the general laws of the State and its home rule charter; and

WHEREAS, the City has Home Rule Powers; and

WHEREAS, the City owns and provides for the operation and maintenance of the Transit System; and

WHEREAS, the Transit System is in need of certain improvements; and

WHEREAS, in connection with the ownership and operation of the Transit System, the City receives certain federal grant revenues; and

WHEREAS, the Council hereby determines that the Transit Project is for governmental purposes and that there is a need for the Transit Project; and

WHEREAS, the City is authorized by the Act to issue the Series 2006 Bonds in the form of a lease purchase agreement to accomplish the Transit Project; and

WHEREAS, the City expects to receive certain FTA Grants from the FTA for the Transit Project; and

WHEREAS, the Series 2006 Bonds shall be issued in the form of a lease purchase agreement pursuant to the Act with a first (but not an exclusive first) lien on the FTA Grants; and

WHEREAS, the Council deems necessary and advisable the authorization of the execution and delivery of a Lease Purchase Agreement by and between the Lessor and the City and related documents, to finance the purchase of additional buses for the Transit System; and

WHEREAS, the City and Council intend to pay the Rental Payments required to be paid under the Lease Purchase Agreement solely from FTA Grants; and

WHEREAS, the Lease Purchase Agreement and related documents will be entered into pursuant to the Revenue Bond Act, Sections 3-31-1 through 3-31-12 NMSA 1978, as amended, and the City's Home Rule Powers; and

WHEREAS, the Transit Department will annually establish adequate budgetary

provisions to promptly pay the Rental Payments as the same become due, all in compliance with law, but solely from the FTA Grants; and

WHEREAS, the Council has determined that it is in the best interest of the City to accept and enter into the Lease Purchase Agreement with the Lessor; and

WHEREAS, all required authorizations, consents or approvals of any State, governmental body, agency or authority for the authorization, execution and delivery of the Lease Purchase Agreement which are required to have been obtained by the date of the adoption of the Ordinance have been obtained, and which will be required to be adopted prior to the Closing Date, will have been obtained by the Closing Date.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. DEFINITIONS AND RULES OF CONSTRUCTION.

(A) **DEFINITIONS.** As used in the Ordinance, the following terms have the meanings specified, unless the context clearly requires otherwise:

ACT. Sections 3-31-1 to 3-31-12 NMSA 1978, as amended, the City Charter, the Home Rule Powers and enactments of the Council relating to the issuance of the Lease Purchase Agreement made by resolution or ordinance, including the Ordinance.

AUTHORIZED OFFICER. The City's Mayor, Chief Administrative Officer, Director of the Department of Finance and Administrative Services, City Treasurer, or other officer or employee of the City when designated by a certificate signed by the Mayor of the City from time to time.

CITY. The City of Albuquerque, in the County of Bernalillo and State of New Mexico.

CITY CHARTER. The City Charter of the City adopted pursuant to the laws of the State at a special election on June 29, 1971 and amended thereafter from time to time.

COSTS. Those costs that are reasonable, necessary and allocable to the Transit Project and are permitted by law, including the reasonable and

necessary fees, costs and expenses incurred by the City in connection with the execution and delivery of the Lease Purchase Agreement.

COUNCIL. The governing body in which is vested the legislative power of the City.

EQUIPMENT. The buses acquired with the proceeds of the Lease Purchase Agreement, as described in the Lease Purchase Agreement.

ESCROW ACCOUNT. The escrow account established by the Escrow Agent and designated the Equipment Acquisition Fund, into which will be deposited to the proceeds of the Lease Purchase Agreement.

ESCROW AGENT. Bank of Albuquerque, N.A. and any successor.

ESCROW AGREEMENT. The Escrow Agreement among the City, the Lessor, and the Escrow Agent, to be dated the date of execution thereof, pursuant to which the Escrow Agent will receive and disburse the proceeds of the Lease Purchase Agreement.

FTA. The United States Federal Transit Administration.

FTA GRANTS. Those amounts paid by the FTA to the City as grants for transit system improvements pursuant to 49 USC Section 5307 and FTA regulations.

HOME RULE POWERS. The authority of the City to exercise legislative powers given pursuant to the City Charter adopted by the City pursuant to Article X, Section 6 of the State Constitution.

LEASE PURCHASE AGREEMENT. The Lease Purchase Agreement between the City and the Lessor, to be dated the date of execution thereof, pursuant to which funds will be loaned to the City by the Lessor to pay for the Transit Project, as amended from time to time.

LEASE PURCHASE FINANCING. The commitment to provide funds from the Lessor to the City to finance the cost of the Transit Project pursuant to the Lease Purchase Agreement.

LEASE PURCHASE PROCEEDS. The money available through the Lease Purchase Financing as provided in the Lease Purchase Agreement.

LESSOR. BOSC, Inc., in its capacity as Lessor under the Lease Purchase Agreement, and its permitted assigns.

ORDINANCE. This ordinance, as amended or supplemented from time to time.

RENTAL PAYMENTS. The payments payable by the City pursuant to the Lease Purchase Agreement in the amounts set forth in the Lease Purchase Agreement.

SERIES 2006 BONDS. The City Transit System revenue bonds authorized to be issued in the form of the Lease Purchase Agreement pursuant to this Ordinance.

TRANSIT PROJECT. Acquiring, constructing, extending, enlarging, bettering, repairing, replacing, equipping or otherwise improving the Transit System by purchasing additional buses, financed in part with the proceeds of the Lease Purchase Agreement pursuant to the Act.

(B) RULES OF CONSTRUCTION. For purposes of the Ordinance, unless otherwise expressly provided in the Ordinance or unless the context requires otherwise:

(1) All references in the Ordinance to designated Sections and other subdivisions are to the designated Section and other subdivision of the Ordinance.

(2) The words "herein," "hereof," "hereunder," and "herewith" and other words of similar import in the Ordinance refer to the Ordinance as a whole.

(3) All accounting terms not otherwise defined in the Ordinance have the meanings assigned to them in accordance with generally accepted accounting principles.

(4) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(5) The headings used in the Ordinance are for convenience of reference only and shall not define or limit the provisions of the Ordinance.

(6) Terms in the singular include the plural and vice versa.

SECTION 2. RATIFICATION. All actions previously taken (not inconsistent with the provisions of the Ordinance) by the Council and the officers and employees of the City, directed toward the Lease Purchase Agreement are ratified, approved and confirmed.

SECTION 3. FINDINGS. The Council declares that it has considered all relevant information and data and makes the following findings:

(A) The issuance of the Series 2006 Bonds in the form of a lease purchase agreement and the execution and delivery of the Lease Purchase Agreement and the Escrow Agreement pursuant to the Act to provide funds to finance the Transit Project in order to improve the Transit System is necessary, advisable and in the interest of the public health, safety and welfare of the residents of the City.

(B) The City will improve the Transit System by the execution and delivery of the Lease Purchase Agreement and the Escrow Agreement to finance the Transit Project.

(C) The money available for the Transit Project from all sources other than the Lease Purchase Agreement is not sufficient to pay when due the Costs of the Transit Project.

(D) The FTA Grants may lawfully be pledged to secure the payment of the Lease Purchase Agreement to the extent and in the manner provided in the Ordinance.

(E) The Series 2006 Bonds may be issued in the form of the Lease Purchase Agreement pursuant to the Act, and the Lease Purchase Agreement and the Escrow Agreement are executed and delivered in accordance with the Act.

(F) The City is using \$5,000,000 from legally available monies, other than proceeds of the Lease Purchase Agreement, to purchase buses as part of its financial obligation to partially fund the Transit Project pursuant to 49 USC Section 5307.

SECTION 4. AUTHORIZATION OF PROJECT AND EXPENSES;

APPROPRIATION OF CERTAIN FUNDS.

(A) For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the citizens of the City and completing the Transit Project, it is hereby declared necessary that the City, pursuant to the Act, execute and deliver, and the City is hereby authorized to execute and deliver the Series 2006 Bonds in the form of the Lease Purchase Agreement and the Escrow Agreement to be payable and collectible solely from the Lease Purchase Proceeds and the FTA Grants. The Lessor has agreed to effect the disbursement of the Lease Purchase Proceeds into an escrow account. The City may use the Lease Purchase Proceeds to pay Costs of the Transit Project. The aggregate principal amount of the Lease Purchase Financing shall be \$20,000,000 and the annual interest rate on that principal amount shall be 4.25% per annum. The Rental Payments shall consist of two payments of \$425,000 each (interest only) in 2007; thereafter, the semi-annual Rental Payments shall be \$1,348,748.34 beginning January 1, 2008 and ending July 1, 2016. The Rental Payments shall be paid in accordance with the schedule set forth in the Lease Purchase Agreement.

(B) The City will provide, and there is hereby appropriated, \$25,127,470.12, comprised solely of FTA Grants, to pay amounts due under the Lease Purchase Agreement.

(C) The forms of the Lease Purchase Agreement and the Escrow Agreement are approved. An Authorized Officer is hereby authorized and directed to execute and deliver the Lease Purchase Agreement and the Escrow Agreement, and any extensions of or amendments to either such document, substantially in the form which is on deposit with the City Clerk, with such changes therein as are not inconsistent with the Ordinance and as shall be approved by an Authorized Officer whose execution thereof, or any extension thereof, or substitution therefor, in its final form shall constitute conclusive evidence of their approval and compliance with this Section. The City Clerk is authorized to affix the seal of the City and to attest the Lease Purchase Agreement, the Escrow Agreement and

other documents pertaining to the Lease Purchase Agreement if required.

(D) From and after the date of the initial issuance and delivery of the Lease Purchase Agreement, Authorized Officers, agents and employees of the City are authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of this Ordinance and the Lease Purchase Agreement.

SECTION 5. SPECIAL LIMITED OBLIGATIONS. The Lease Purchase Agreement and all payments of principal of and interest thereon, shall be special limited obligations of the City and shall be payable, collectible or reimbursable solely from the FTA Grants and the Equipment. The Lessor may not look to any general or other municipal fund or any funds derived from general property taxes for the payment of the principal of, or interest on the Lease Purchase Agreement, except the FTA Grants and the Equipment. The Lease Purchase Agreement shall not constitute an indebtedness of the City within the meaning of any constitutional, charter or statutory provision or limitation, nor shall it be considered or held to be a general obligation of the City, and it shall recite that it is payable and collectible solely out of the FTA Grants and the Equipment, and that the Lessor may not look to any general or other municipal fund or any funds derived from general property taxes for the payment of the principal of, or interest on, the Lease Purchase Agreement.

SECTION 6. USE OF PROCEEDS; APPROPRIATIONS. Lease Purchase Proceeds shall be placed in the Escrow Account and disbursed pursuant to the Lease Purchase Agreement. The City will use the Lease Purchase Proceeds in the Escrow Account to pay the Costs of the Transit Project in accordance with the terms of the Lease Purchase Agreement. All \$20,000,000 of funds disbursed pursuant to the Lease Purchase Agreement will be used to pay, and are hereby appropriated for the payment of, Costs of the Transit Project. The City anticipates receiving FTA Grants in fiscal years 2007 through 2016. The FTA Grants are hereby appropriated and shall be used to pay the Lease Purchase Agreement. Actual amounts to be appropriated shall correspond to the actual amounts of FTA

Grants received by the City. However, nothing in this section shall be construed as prohibiting the City, in its sole and absolute discretion, from making Rental Payments from any moneys which may be lawfully used and which are legally available for that purpose.

SECTION 7. SECURITY INTEREST. As security for its obligations under the Lease Purchase Agreement, the City will grant to the Lessor a security interest constituting a first lien on the Equipment, and on all additions, attachments, accessories and substitutions, thereto, and on any proceeds therefrom; provided, however, that the Equipment has been purchased with Lease Purchase Proceeds.

SECTION 8. EVENTS OF DEFAULT. The City designates "Events of Default" relating to the Lease Purchase Financing as those set forth in the Lease Purchase Agreement.

SECTION 9. DEFEASANCE. In accordance with the Lease Purchase Agreement, the City may prepay the Rental Payments on any rental payment date on or after July 25, 2007 by paying the applicable purchase price set forth in the Lease Purchase Agreement. When all obligations under the Lease Purchase Agreement have been paid, all other obligations of the City under the Ordinance shall be discharged and the Lease Purchase Agreement shall no longer be deemed to be outstanding.

SECTION 10. MERGER. All recitals contained in the preamble hereof are found to be true and correct and made a part of this Ordinance.

SECTION 11. AMENDMENT OF ORDINANCE. This Ordinance may be amended from time to time by resolution or ordinance of the Council, provided, however, that, following execution and delivery of the Lease Purchase Agreement, this Ordinance may not be amended without the consent of the Lessor.

SECTION 12. ORDINANCE IRREPEALABLE. After the Lease Purchase Agreement has been executed and delivered, the Ordinance shall be and remain irrepealable until the Lease Purchase Agreement has been fully paid, canceled and discharged, as provided in the Ordinance.

SECTION 13. SEVERABILITY CLAUSE. If any section, paragraph,

clause or provision of the Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of the Ordinance.

SECTION 14. REPEALER CLAUSE. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

SECTION 15. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE. Upon due adoption of this Ordinance, it shall be recorded and preserved by the City Clerk, authenticated by the signature of the President of the Council and City Clerk, and approved by the Mayor and the seal of the City impressed hereon, and the title and general summary of the subject matter contained in the Ordinance shall be published in a newspaper which maintains an office and is of general circulation in the City, in accordance with law, and the Ordinance shall be in full force and effect upon such publication.

SECTION 16. GENERAL SUMMARY FOR PUBLICATION. The title and a general summary of the subject matter contained in the Bond Ordinance shall be published in substantially the following form:

**CITY OF ALBUQUERQUE, NEW MEXICO
NOTICE OF ADOPTION OF ORDINANCE**

Notice is hereby given of the title and of a general summary of the subject matter contained in City Ordinance Seventeenth Council Bill No. F/S O-06-24 (the "Ordinance"), duly adopted and approved by the City Council of the City of Albuquerque, New Mexico, on June 19, 2006. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk in the office of the City Clerk, Albuquerque/Bernalillo County Government Center, One Civic Plaza, N.W., Albuquerque, New Mexico.

The title of the Ordinance is:

The proposed title of the Ordinance is as follows:

ORDINANCE

AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE, NEW MEXICO TRANSIT SYSTEM IMPROVEMENT GRANT REVENUE BONDS, SERIES 2006, IN THE FORM OF A LEASE PURCHASE AGREEMENT IN THE AMOUNT OF \$20,000,000 FOR THE PURPOSE OF EXTENDING, REPAIRING, REPLACING AND IMPROVING THE CITY'S TRANSIT SYSTEM BY THE PURCHASE OF ADDITIONAL BUSES; PROVIDING FOR THE DISPOSITION OF, AND OTHER DETAILS RELATING TO, CERTAIN GRANT REVENUES OF THE TRANSIT SYSTEM, INCLUDING THE PAYMENT OF DEBT SERVICE ON THE SERIES 2006 TRANSIT SYSTEM IMPROVEMENT GRANT REVENUE BONDS; APPROVING THE SALE AND THE TERMS OF THE SERIES 2006 BONDS; PROVIDING THE FORM, TERMS AND CONDITIONS OF THE SERIES 2006 BONDS, IN THE FORM OF A LEASE PURCHASE AGREEMENT; PRESCRIBING OTHER DETAILS CONCERNING THE SERIES 2006 BONDS AND TRANSIT SYSTEM GRANT REVENUES, INCLUDING BUT NOT LIMITED TO COVENANTS AND AGREEMENTS IN CONNECTION WITH THE SERIES 2006 BONDS AND THE FORM AND MANNER OF EXECUTION OF THE SERIES 2006 BONDS; MAKING CERTAIN APPROPRIATIONS; AND RATIFYING ACTION PREVIOUSLY TAKEN.

The following is a general summary of the subject matter contained in the Ordinance.

The Ordinance recites or includes such matters as: the City is a municipal corporation under the laws of the State of New Mexico; the City has home rule powers; the Council deems the authorization and execution of the Lease Purchase Agreement necessary and advisable; FTA Grants will be available to pay the Rental Payments required to be paid by the Lease Purchase Agreement, and the Lease Purchase Agreement and related documents will be entered into pursuant to the Revenue Bond Act and the City's Home Rule powers.

The Ordinance defines the terms used in the Ordinance; ratifies actions previously taken with respect to the Lease Purchase Agreement; and provides findings by the City Council relating to the necessity of the execution and delivery of the Lease Purchase Agreement, the financing of the Transit Project, and the

compliance of the Lease Purchase Agreement with the provisions of the applicable law.

The Ordinance authorizes the completion of the Transit Project and payment of the cost of the Transit Project from the proceeds of the Lease Purchase Agreement in the amount of \$20,000,000.

The Ordinance authorizes the City to execute and deliver the Lease Purchase Agreement to be payable and collectible solely from FTA Grants and to execute and deliver the Escrow Agreement; provides that the principal amount of the Lease Purchase Financing shall be \$20,000,000; makes an appropriation of federal capital grant funds in an amount necessary to pay amounts due under the Lease Purchase Agreement; establishes that the annual interest rate on that principal amount shall be 4.25% per annum; provides that the Lease Purchase Agreement shall not exceed ten (10) years; approves terms of the Lease Purchase Agreement and the Escrow Agreement; and delegates certain powers to the officers of the City.

The Ordinance provides that the Lease Purchase Agreement, and all payments due thereunder, shall be special limited obligations of the City and shall be payable and collectible solely from FTA Grants; provides that the Lease Purchase Agreement shall not constitute an indebtedness or debt within the meaning of any constitutional, charter or statutory provision or limitation and shall not be considered or held to be a general obligation of the City.

The Ordinance provides that the Transit Project will be operated and maintained in accordance with the terms of the Lease Purchases Agreement.

The Ordinance provides details with respect to the disposition and use of the Lease Purchase Proceeds and makes certain appropriations.

The Ordinance provides that the City will grant to the Lessor a security interest constituting a first lien on the buses purchased with the proceeds of the Lease Purchase Agreement.

The Ordinance provides for certain Events of Default; provides for termination of the Lease Purchase Agreement and states that the Ordinance is irrevocable.

CITY OF ALBUQUERQUE, NEW MEXICO

By _____
Millie Santillanes, City Clerk

WITNESS my hand and the Seal of the City of Albuquerque as of
_____, 2006.

City Clerk

X:\SHARE\Legislation\Seventeen\O-24fsfin.doc

SECTION 1.	DEFINITIONS AND RULES OF CONSTRUCTION	3
SECTION 2.	RATIFICATION	5
SECTION 3.	FINDINGS	5
SECTION 4.	AUTHORIZATION OF PROJECT AND EXPENSES; APPROPRIATION OF CERTAIN FUNDS	6
SECTION 5.	SPECIAL LIMITED OBLIGATIONS	7
SECTION 6.	USE OF PROCEEDS; APPROPRIATIONS	7
SECTION 7.	SECURITY INTEREST	8
SECTION 8.	EVENTS OF DEFAULT	8
SECTION 9.	DEFEASANCE	8
SECTION 10.	MERGER	8
SECTION 11.	AMENDMENT OF ORDINANCE	8
SECTION 12.	ORDINANCE IRREPEALABLE	8
SECTION 13.	SEVERABILITY CLAUSE	9
SECTION 14.	REPEALER CLAUSE	9
SECTION 15.	RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE	9
SECTION 16.	GENERAL SUMMARY FOR PUBLICATION	9

